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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY 
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COURT OF APPEALS - DIVISION II

FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)

RESPONDENT,)

V.)

SEBASTIAN HALLER,)

APPELLANT.)
_____)

NO. 47308-9-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

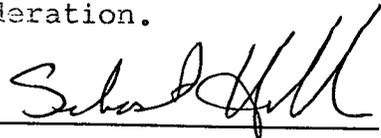
I, SEBASTIAN J. HALLER, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Here are the Additional Grounds:

- 1) SPEEDY TRIAL RIGHTS;
- 2) PROSECUTORIAL MISCONDUCT;
- 3) INEFFECTIVE ASSISTANCE OF COUNSEL;
- 4) SUFFICIENCY OF THE EVIDENCE.

Please see the attached pages for explanation of each of the grounds I bring for the Court's consideration.

Date: 12/20/2015

Signature: 

GROUND 1: SPEEDY TRIAL RIGHTS

Authorities.

Review for abuse of discretion the denial of a motion to dismiss for a fast and speedy trial violation. City of Seattle v. Guay, 150 Wn.2d 288, 76 P.3d 231 (2003);

CrR 3.3 Guarantees a criminal defendant the right to a speedy trial. State v. Welker, 157 Wn.2d 557, 564, 141 P.3d 8 (2006);

The Court denied Mr. Haller the right to a speedy trial. This violated Constitution 14th Amendment Due Process. Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 938, 18 L.Ed.2d 1 (1967);

I was originally arrested on May 8, 2014. Bail was set on May 9, 2014, and arraignment was May 15, 2014, with the trial set for June 23, 2014. Then subsequently these charges were dismissed without prejudice on June 19, 2014, for lack of evidence.

On November 7, 2014, the charges were refiled against me. Since I was already in custody, a transport order was given to take me to Lewis County Jail for arraignment. I went to court on December 8, 2014, setting bail.

There, in open court, on record, in the court minutes, the prosecutor stated that we were on a very short clock. Because there is a 60 day speedy clock and I was originally held on this previously last summer, the prosecutor wanted to set another court date for trial setting later that week.

Three days later, December 11, 2014, I was in court setting trial. Just the fact that the prosecutor stated he knew then that it was a "60 day clock for speedy trial" is sufficient proof that he was aware of my speedy trial rights, yet he still set trial outside those speedy trial rights.

Then at a later hearing, the prosecutor tried to establish that the speedy trial clock should be 90 days and that he knew it was 90 days prior. But, his statement previous proves that he actually believed and knew it to be a 60 day clock. Because of this error he was attempting to deceive the court by saying it should be a 90 day clock and that was what he was going off to begin with.

Even with that, the speedy trial clock, had expired.

Finally, if my rights to a speedy trial had been followed and adhered to, then that timeframe would have expired on December 7, 2014. Putting everything after outside of that deadline.

GROUND 1 - <continued>

There is a question of dates from May 8, 2014, to June 19, 2014, of how many days passed. My attorney and I believe 41 days had passed. But, regardless of when I was recharged with the same crimes, the courts still had 30 days. That 30 days lapsed on December 7, 2014.

My court appearance on December 8, 2014, had already surpassed the timeframe for my right to speedy trial.

Again, as established in the Court minutes of that appearance in open court on December 8, 2014. The prosecutor and Judge Richard Brosey clearly establish their belief that I was under a "60 day clock", that Judge Brosey asked the prosecutor how much time elapsed prior from May 8, 2014 to June 11, 2014, or June 19, 2014. That, with it being under 30 days, approximately 25 days remaining, that the court has the full 30 days.

So, it is proven the belief of the prosecutor and Judge on that date in open court, my rights to a speedy trial clock was a 60 day clock.

And, if so, then that clock started again on November 7, 2014, and elapsed on December 7, 2014. Therefore, causing everything else to be outside that 60 day clock.

The request for dismissal with prejudice should have been accepted and the charges dismissed with prejudice.

GROUND 2: PROSECUTORIAL MISCONDUCT

Authority.

Arguing facts not in evidence constitutes prosecutorial misconduct. State v. Glassman, 175 Wn.2d 696, 704-05, 285 P.3d.

Prosecutor : argued that defendant Haller was the only person with something to lose or gain here, so the propensity to lie was greater. There was no evidence that Haller had lied, or that the witnesses (C.I. Desiree Prue and Arthur Haller-Heilman) had not lied. Therefore, the prosecutor purposely argued facts not in evidence.

Burden of Proof.

Not all the elements were met to justify a guilty verdict on multiple counts. Every element of the crime must be proven to find a defendant guilty of a crime. The prosecutor did not establish proof of every element beyond the burden of reasonable doubt.

GROUND 2 - <continued>

The State could not prove beyond reasonable doubt that the defendant knew of the drugs inside the residence and their exact whereabouts. The State did not prove beyond a reasonable doubt that the defendant knew of the delivery of drugs to the C.I. Desiree Prue at the second controlled buy.

What was proven was that the C.I. had to wait for the drugs. Another person went to the residence, then the transaction occurred.

That in itself, is sufficient reasonable doubt. And, further proof was established when after the controlled buy and the subsequent warrant served; the buy money was found to be in Arthur Haller-Heilman's possession.

Proof beyond all doubt, whose drugs were sold.

GROUND 3: INEFFECTIVE ASSISTANCE OF COUNSEL

Authority.

Defendant received ineffective assistance of counsel where counsel's failure to move to suppress the evidence, the court reverses. State v. Reichenbach, 153 Wn.2d 126, 101 P.3d 80 (2004).

Fourth Amendment - No nexus to search and seizure proving it was Haller's drugs.

Mr. Haller raises the following claims regarding the ineffectiveness of counsel by Sam Groberg:

- 1) Neglecting to object to trial setting outside of the speedy trial clock;
- 2) Refusing to object to C.I. Desiree Prue's testimony stating multiple times, that defendant was in prison;
- 3) For not submitting transport order for Arthur Haller-Heilman to be brought from WSP to be secured as a witness for the defense.

In the transcript, it is clearly stated that I believed the witness Arthur Haller-Heilman was going to be transported to Lewis County Jail to be a witness for the defense.

Immediately upon talking with my attorney Sam Groberg, I conveyed the desire to call my brother Arthur, as a defense witness.

On multiple occasions I had asked if Arthur had been sent for. On those occasions, my lawyer told me that he had put in for a transport order requesting my brother be brought from WSP to Lewis County Jail.

GROUND 3 - <continued>

Why was he not sent for until the prosecutor sent Centralia Police detectives over the WSP to interview him and drive back by car to Lewis County Jail?

Was Mr. Groberg ineffective for not putting in the transport order to secure my brother as a witness in my defense?

GROUND 4: SUFFICIENCY OF THE EVIDENCE

Authority.

Petitioner was convicted on less than proof beyond a reasonable doubt of every element of the crime charged, violated [Haller's] Constitutional Right to a fair trial. In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

On June 19, 2014, the charges of Count 1 - Delivery, Count 2 - Delivery, and Count 3 - Possession w/Intent, were dismissed without prejudice, for lack of evidence.

On November 7, 2014, these dismissed charges, were refiled to the court.

I told my attorney to have a suppression hearing. He replied that I could not receive one, due to lack of evidence.

For Count 1 - delivery is hearsay; there is no evidence attaching me to the crime.

For Count 2 - Delivery, I was not present and there is no evidence attaching me to this crime.

For Count 3 - possession w/intent to delivery or manufacture, I no longer lived at this residence so, there is no nexus to possession.

Had there been a suppression of evidence hearing, this evidence would have been suppressed.

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